Filed 7/14/20 Rancho Mirage Mobile Home etc. v. Coachella Valley Water Dist. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

RANCHO MIRAGE MOBILE HOME COMMUNITY, LP, Plaintiff and Appellant, v. COACHELLA VALLEY WATER DISTRICT, Defendant and Respondent.	E072357 (Super.Ct.No. PSC1705021) OPINION

APPEAL from the Superior Court of Riverside County. James T. Latting, Judge. Affirmed.

Rudderow Law Group, Andrew M. Sussman, Daniel T. Rudderow and Larissa A. Branes for Plaintiff and Appellant.

Best Best & Krieger, Whitney R. Blackhurst and James B. Gilpin for Defendant and Respondent.

INTRODUCTION

Rancho Mirage Mobile Home Community, LP, plaintiff, sued Coachella Valley Water District (CVWD), defendant, for violations of Proposition 218 and inverse condemnation. Specifically, plaintiff challenges the sewer charges imposed by defendant on plaintiff's 80 vacant mobile home spaces. CVWD demurred, arguing that plaintiff failed to exhaust all administrative remedies prior to filing suit. After the second amended complaint failed to overcome the pleading defect, the trial court sustained defendant's demurrer without leave to amend on that ground. Plaintiff appealed.

On appeal, plaintiff argues the trial court erred in sustaining the demurrer without leave to amend because plaintiff adequately pled that it was not required to exhaust its administrative remedies before filing suit because defendant's administrative remedy was legally inadequate and or it would have been futile to do so. We affirm.

BACKGROUND

1. *Historical Facts*[1]

Plaintiff is the owner of the mobile home park known as Rancho Mirage Mobile Home Community located in Rancho Mirage, California, in Riverside County. The mobile home park consists of 288 spaces. Eighty of those spaces are uninhabited.

Defendant, CVWD, is a county water district tasked with providing sewer services to those within its service area, including plaintiff's mobile home park. Specifically,

[1] We take the facts from the second amended complaint, which was the subject of the ruling from which the appeal is taken. "On appeal from dismissal following a sustained demurrer, we take as true all well-pleaded factual allegations of the complaint." (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 495.)

plaintiff's mobile home park is within defendant's improvement district number 80. Defendant has provided plaintiff's mobile home park with sewer services for a monthly sewer service fee per defendant's regulations for years.

Prior to February 23, 2016, defendant's monthly sewer services fees were incorporated under ordinance number 1138. However, on February 23, 2016, defendant adopted ordinance number 1427 which superseded ordinance number 1138 and updated its regulations. Under ordinance number 1427, the monthly sewer fee was the number of "equivalent dwelling units" (EDUs) on the particular property multiplied by the designated amount corresponding to the improvement district that the property was within. Different types of dwellings received different numbers; mobile homes counted as one EDU. Since plaintiff's mobile home park location was within improvement district number 80, it had a monthly sewer fee of $24.50 multiplied by the 288 mobile spaces.

Included in ordinance number 1437,[2] under section 12-1 titled "Hearing and Administrative Procedures," was the administrative remedy procedure to be followed by customers wishing to appeal "a decision, enforcement of a policy or procedure, rate, fee, charge or penalty." The relevant parts of section 12-1 provide as follows: the appeal must be in writing and submitted to the general manager within thirty days of the effective date of an enforcement action or decision, other than notice of service discontinuance. It requires that the appeal include the specific decision, policy,

[2] Plaintiffs submitted a request that we take judicial notice of the ordinance, ordinance number 1427. We grant the request.

procedure, rate, charge or penalty being challenged along with a detailed description of the nature of the challenge, evidence in support of the challenge, and the remedy requested.

In addition to the process by which an appeal can be submitted, section 12-1 also grants customers a hearing on their appeal and details the procedure for such hearings. The hearing will be conducted by either CVWD's General Manager or a designated representative. It will be held as soon as reasonably possible and in cases of service discontinuance reasonable efforts will be made to hold the hearing within five business days of receipt of the customer's appeal. The administrative remedy states that customers will be given a reasonable opportunity to present information in support of their appeal and CVWD staff will be given an opportunity to reply. It goes on to require that a written notice of the decision by the general manager or the designated representative be given to the customer within five business days of the close of the hearing, absent any extenuating circumstances. That decision will be final.

The end of section 12-1 states that failure to file a timely appeal that adheres to the process set out therein will be considered a failure to exhaust administrative remedies that may affect the customer's attempt at judicial review.

2. *Procedural History*

On September 14, 2017, plaintiffs filed a complaint for declaratory relief, inverse condemnation, and request for injunctive relief against defendants.. The complaint alleged that in adopting ordinance numbers 1138 and 1427, defendant violated

Proposition 218. Specifically, the complaint alleged defendant violated Article XIII D's requirements because (1) the revenues derived from the sewer fees exceed the funds required to provide the service, (2) those revenues are used for impermissible purposes, (3) the sewer fees exceed the proportional costs of providing the service to the mobile home park spaces, with EDUs limited to charges for sewer fees for actually occupied spaces with residents using the service, and (4) the sewer fees impose an unlawful charge based on potential or future sewer uses, as they include charges based on the mobile home park operating at full capacity, which it was not. Essentially arguing that it was "unlawful, invalid, void, and unconstitutional" that defendant was charging plaintiff for uninhabited mobile home spaces.

On November 17, 2017, defendant filed a general demurrer in response to plaintiff's complaint. Defendant contended that plaintiff failed to exhaust its administrative remedies before filing suit, particularly failing to file an appeal as detailed under section 12-1 of ordinance number 1427. Defendant also contended that the complaint was barred by Government Code section 66022's statute of limitations and that plaintiff's complaint failed to allege a compensable taking of plaintiff's property to support plaintiff's inverse condemnation cause of action.

On December 27, 2017, plaintiff opposed the demurrer. Plaintiff argued it was not required to exhaust the administrative remedies provided in section 12-1 for they were legally inadequate. Plaintiff also argued Government Code section 66022 was inapplicable because plaintiff's complaint did not attack the facial validity of ordinance

number 1427 but its specific application to plaintiff, which plaintiff argued was outside the scope of Government Code section 66022. It also addressed defendant's claim that plaintiff failed to adequately plead an inverse condemnation claim.

At the January 10, 2018 hearing, the trial court sustained the demurrer with leave to amend at the hearing.

Plaintiff filed its first amended complaint on February 9, 2018, which alleged the same causes of action as the original complaint. Plaintiff also alleged that defendant was treating it more harshly than others in violation of state and federal law. The first amended complaint also alleged that the plaintiff exhausted its administrative remedies and or it would have been futile to do so. In support of this, plaintiff attached the letter it sent to CVWD's Director of Engineering and to the City of Rancho Mirage's City Attorney, dated June 23, 2017. In the letter, plaintiff alleged defendant's charge for sewer fees of its 80 vacant spaces was a violation of Proposition 218 and requested an abatement of the sewer fees for the eighty vacant spaces and "a full refund for the sewer fees the City has illegally collected for the spaces over the past decade or so." Plaintiff also attached the response letter it received from defendant's general counsel, dated July 7, 2017, denying plaintiff's request. In that response letter, defendant's counsel explained that the plaintiff's property only had one connection to the sewer system, not individual connections for each mobile home space, and referred plaintiff to section 12-1 of ordinance number 1427, for appropriate dispute resolution procedures.

On March 16, 2018, defendant filed another demurrer. Defendant argued that the plaintiff still had not exhausted its administrative remedies, and because of it, the trial court had no jurisdiction. Specifically, defendant argued the letters were evidence of plaintiff's failure to exhaust administrative remedies as it was sent to the director of engineering not the general manager as required. Furthermore, defendant argued plaintiff failed to plead the futility of exhausting administrative remedies with particularity and renewed its previous statute of limitations and failure to adequately plead inverse condemnation arguments.

Plaintiff filed its opposition to the demurrer on April 18, 2018. In it, plaintiff argued that the futility and inadequate remedy exceptions did not require it to exhaust its administrative remedies. It also responded to defendant's arguments regarding Government Code section 66022 and the inverse condemnation claim.

On May 1, 2018, after hearing oral argument, the trial court sustained defendant's demurrer to the first amended complaint and granted plaintiff 30 days leave to amend.

On May 31, 2018, plaintiff filed its second amended complaint. The seconded amended complaint added an allegation that section 12-1 was a legally inadequate remedy because it failed to provide the standards for the evaluation of evidence or guidance on how the decisions are made. Plaintiff also added that the response letter from defendant's general counsel supported its futility argument, as it spoke to the history of plaintiff's claims and efforts and the specificity of the denial from defendant in response.

On July 5, 2018, the defendant filed its demurrer to the second amended complaint, asserting arguments made in its previous demurrers.

Plaintiff again opposed the demurrer, again arguing it was not required to exhaust the administrative remedies prior to filing suit, that it adequately pled an inverse condemnation claim, and that the statute of limitations from Government Code section 66022 was inapplicable.

On November 8, 2018, the trial court sustained defendant's demurrer without leave to amend after finding that plaintiff did not exhaust its administrative remedies before filing suit and was required to do so. In making that ruling, the trial court noted that "CVWD's counsel's letter specifically stated that 'if you wish to pursue this matter, the appropriate procedures for dispute are set forth in Part 12 of the Regulations.' SAC, Ex. D. The clear import of CVWD's statement that Plaintiff had administrative remedies that remained to be pursued is [proof] that CVWD's counsel was not communicating a final decision of CVWD." Plaintiff timely appealed.

DISCUSSION

Plaintiff contends that the trial court erred by sustaining defendant's demurrer without leave to amend because plaintiff was not required to exhaust its administrative remedies. We disagree.

1. *Standards of Review*

The standard of review on appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend is well settled. (*City of Dinuba v. County*

of Tulare (2007) 41 Cal.4th 859, 865.) Demurrers raise a question of law, so on appeal the standard of review is de novo. (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034.) In reviewing demurrers, "we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]" (*Ibid*.) Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusion of law.

"When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action." (*City of Dinuba v. County of Tulare, supra,* 41 Cal.4th at p. 865.) If the demurrer is sustained without leave to amend, we also ask whether there is a reasonable probability that the defect can be cured by amendment. (*Ibid.*) "The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Where the defect can be cured by amendment, we find the trial court abused its discretion and reverse. (*City of Dinuba v. County of Tulare, supra*, 41 Cal.4th at p. 865.) Otherwise, we affirm.

It is proper to sustain a demurrer where a plaintiff failed to comply with the doctrine of exhaustion of administrative remedies. (*Parthemore v. Col* (2013) 221 Cal.App.4th 1372, 1379.) Whether plaintiff complied with the doctrine of exhaustion of administrative remedies is a question of law that we review de novo. (*Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 380.)

2. *The order sustaining the demurrer was proper because plaintiff did not exhaust its administrative remedies, and it cannot avail itself of the claimed exceptions.*

Plaintiff concedes that it failed to comply with its administrative remedies before filing suit. However, plaintiff argues that it was not required to comply with the administrative remedy because it was legally inadequate, and that complying with the requirement would have been futile, thereby excepting plaintiff from the need to exhaust of administrative remedies. In this regard, plaintiff asserts that the SAC was not an attack on Government Code section 66022 on its face, such that the exhaustion of remedies requirement applied. We disagree.

Under the doctrine of exhaustion of administrative remedies, "where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before courts will act." (*Abelleira v. District Court of Appeal (*1941) 17 Cal.2d 280, 292.) In fact, "exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts." (*Id.* at p. 293.) After all, one of the purposes of the exhaustion doctrine "'"is to lighten the burden of overworked courts in cases where administrative remedies are available and are as likely as the judicial remedy to provide the wanted relief." [Citation.]'" (*Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 501.) "Exhaustion requires 'a full presentation to the administrative agency upon all issues of the case and at all prescribed stages of the administrative proceedings.'" (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 609, quoting *Bleeck v. State Board*

of Optometry (1971) 18 Cal.App.3d 415, 432.) Therefore, consideration of whether exhaustion of remedies occurred in a given case depends on the procedures applicable to the public agency in question. (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 591-592.)

Although in general a litigant must exhaust administrative remedies before resorting to the court, there are exceptions. (*City of San Jose v. Operating Engineers Local Union No. 3, supra,* 49 Cal.4th 597, 609.) For one, the doctrine of exhaustion of administrative remedies does not apply when the administrative remedy is inadequate. (*Ibid.*) There is no single general definition that a procedure must satisfy to constitute an adequate administrative remedy. (*Plantier v. Ramona Municipal Water Dist., supra,* 7 Cal.5th at p. 383.) "Such a question may vary among agencies and legislative schemes." (*Ibid.*) However, while there is no specific definition, courts have found that an administrative remedy that has "no procedures regarding how to request a hearing, no timelines for when such a hearing will be held or concluded, and no standards for decision making" is inadequate to trigger a mandatory exhaustion requirement. (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 237.)

A policy that only provides for the submission of disputes to a decision maker without stating whether the aggrieved party is entitled to an evidentiary hearing or the standard for reviewing the prior decision is generally deemed inadequate. (*Plantier v. Ramona Municipal Water Dist., supra,* 7 Cal.5th at p. 384.) That is because as a general matter, a remedy is not adequate unless it establishes "'clearly defined machinery for the

submission, evaluation and resolution of complaints by aggrieved parties.'" (*Ibid*., quoting *Rosenfield v. Malcolm* (1967) 65 Cal.2d 559, 566.)

Another exception to the doctrine of exhaustion of administrative remedies, is that of futility. (*Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, 936.) However, "'"[f]utility is a narrow exception to the general rule"' of exhaustion of remedies." (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1313.) The futility exception only applies when a litigant can positively state that the agency it is suing, already declared what the ruling would be in a particular case, assuming that the plaintiff's request had been timely. (*Id*. at pp. 1313-1314.) It is not enough that the litigant merely has a preconceived notion of what the ruling would have been if it followed the agency's procedure. (*Abelleira v. District Court of Appeal, supra*, 17 Cal.2d at pp. 300-301.) It makes no difference if the preconceived notion was based on similar cases. (*Ibid*.)

A third exception applies when the administrative procedure is too slow to be effective, or when requiring exhaustion of administrative remedies before seeking judicial relief would result in irreparable harm. (*City of San Jose v. Operating Engineers Local Union No. 3, supra*, 49 Cal.4th at p. 609.)

In the present case, despite plaintiff's contentions to the contrary, the claim for relief from the imposition of sewer fees was a direct challenge to the ordinance. That being the case, plaintiff had a legally adequate administrative remedy and procedure in place for customers wishing to appeal "a decision, enforcement of a policy or procedure,

rate, fee, charge or penalty." That procedure is detailed in section 12-1 titled "Hearing and Administrative Procedures."

Section 12-1 clearly states that customer appeals must be in writing and submitted to the general manager within 30 days of the effective date of the challenged enforcement action or decision.[3] The submission mechanisms do not end there. The procedure also describes that a customer's appeal should include the specific decision, policy, procedure, rate, charge or penalty being challenged, a detailed description of the nature of the challenge, evidence in supporting the challenge, and the remedy requested.

Section 12-1 states that customers will be granted a hearing as soon as reasonably possible in which the customer will be given the opportunity to present information in support of their appeal. CVWD staff will be given the opportunity to reply. Final resolution of the customer's appeal will be issued by the general manager within five business days of the close of the hearing, absent extenuating circumstances.

Thus, section 12-1 of ordinance number 1427 establishes a clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties that entitles aggrieved parties to evidentiary hearings.[4] (See *Plantier v. Ramona Municipal Water Dist.*, *supra*, 7 Cal.5th at p. 384.) Therefore, plaintiff cannot avail itself

---

[3] Section 12-1 also provides that where the customer's appeal is due to a notice of service discontinuance the appeal must be submitted in writing to the general manager within five business days, as opposed to the thirty-day time period given to other decisions and actions.

[4] Section 12-1 is unlike the administrative remedy in *City of Oakland v. Oakland Police & Fire Retirement System, supra,* 224 Cal.App.4th at page 237, because section 12-1 has a procedure for requesting hearings, entitles customers to evidentiary hearings and contains set timelines for the hearings and the final decision.

of the exception to the rule requiring exhaustion of administrative remedies under the legally inadequate remedy exception.

Nor can plaintiff avail itself from the exhaustion requirement under the futility exception. Plaintiff contends that it can amend its complaint to positively state that CVWD has declared it rejects the plaintiff's claim and that any further appeal will result in a denial and rejection of the plaintiff's protest. Plaintiff bases this argument on the response the plaintiff received to its letter and the history of the claims made with CVWD. However, in that response, CVWD informed plaintiff of its failure to follow the administrative procedure set out in section 12-1, by sending plaintiff's appeal to someone other than CVWD's General Manager, and by submitting it more than 30 days after enforcement of the action or decision plaintiff attempted to challenge.

Moreover, as the trial court reasoned in its order granting the demurrer, "CVWD's counsel's letter specifically stated that 'if you wish to pursue this matter, the appropriate procedures for dispute are set forth in Part 12 of the Regulations.' SAC, Ex. D. The clear import of CVWD's statement that Plaintiff had administrative remedies that remained to be pursued is [proof] that CVWD's counsel was not communicating a final decision of CVWD." Thus, plaintiff's futility contention is merely a preconceived notion of what the ruling would have been had it followed the procedure set out in section 12-1. (See *Abelleira v. District Court of Appeal, supra,* 17 Cal.2d at pp. 300-301.) That is not sufficient to establish futility under the doctrine of exhaustion of administrative remedies. (*Ibid.*) Therefore, the futility exception does not apply to the exhaustion requirement

Thus, the grant of demurrer was proper because plaintiff did not exhaust its administrative remedies, and it cannot avail itself of any exception to the requirement.

3. *The grant of demurrer without leave to amend was proper because plaintiff could not have cured its complaint through amendment.*

Plaintiff does not make the specific argument that granting the demurrer without leave to amend was error. Rather, plaintiff asks that we reverse the judgment with the trial court directed to overrule the demurrer, "thereby requiring [defendant] to answer the SAC so that this case can proceed to a trial on the merits." We note that it is the plaintiff's burden to show that its complaint could be cured by amendment and failed to do so. (*Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081.) We disagree with the notion that plaintiff's complaint could have been cured.

Here, to cure plaintiff's complaint, plaintiff would have to be able to allege compliance with section 12-1. However, section 12-1 had a 30-day limit on appeals from the day that the enforcement action or decision was adopted, and that time limit has long since passed, where plaintiff had 30 days from February 23, 2016, to submit the written appeal to CVWD's General Manager before being deemed to have waived its right to appeal per section 12-1.[5] Because the 30-day time limit had passed before bringing the lawsuit, plaintiff cannot comply with the exhaustion requirement under section 12-1. As

[5] Under section 12-1 "A failure to file a timely appeal in accordance with this Section shall be deemed a waiver of the right to appeal and will be considered a failure to exhaust administrative remedies which may impact any attempt by the Customer for any judicial review."

such, it cannot amend its complaint to overcome the pleading defect. Therefore, the order sustaining the demurrer without leave to amend was proper.

4. *Remaining Contentions*

Plaintiff also contends that it properly stated a cause of action for declaratory relief where the imposition of sewer fees for unoccupied lots constituted an "as applied" challenge to the ordinance, to which the statute of limitations did not apply. However, where the ordinance in question, ordinance number 1427, has been superseded by a new ordinance, ordinance number 1427.1, the issue is moot. In any event, because any challenge to an ordinance must be made within 120 days of its adoption, the statute of limitation has elapsed on that claim also. (Govt. Code, § 66022.)

As for plaintiff's cause of action for inverse condemnation, the collection of sewer service fees from property owners does not constitute a constitutional taking. (*Utility Audit Co. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 957.)

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.